

ELECTRICITY NORTH WEST GENERAL CONDITIONS OF CONTRACT (MAJOR PROJECTS)

1. Definitions

In these Conditions:

"Acceptance Date" means the later of the dates on which: (i) You confirm acceptance of the Offer to Us and (ii) any applicable interactivity connection moratorium period comes to an end and (iii) You pay the Price or part thereof due on acceptance;

"Acceptance Form" means the acceptance form provided by Us to You with the Offer;

"Act" means the Electricity Act 1989 (as amended);

"Authority" means the Gas and Electricity Markets Authority established under section 1 of the utilities Act 2000;

"Breakdown" means the breakdown of the Price contained in the Offer;

"CDM Regulations" means the Construction (Design and Management) Regulations 2015 and the related Approved Code of Practice;

"Consents" means all or any planning or other statutory consents, approvals, licences and permissions and all wayleaves, easements, leases, rights over land or consents, approvals, licences or permissions of any kind required for the Works as We may in Our sole discretion deem appropriate;

"Contract" means the contract entered into between Us and You for the provision of the Works if You accept the Offer;

"Contract Documentation" means the Offer, these Conditions and the Acceptance Form;

"Conditions" means these terms and conditions;

"Environmental Impact Assessment" means an environmental statement as defined in The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as amended from time to time...

"Force Majeure" means fire, lightning strike, flood, explosion, acts of God, war or national emergency, strikes, lock out or other forms of industrial action but excluding any such events insofar as they arise from or are attributable to the wilful act, omission or negligence of the Party relying on the event of Force Majeure or to the failure on the part of the Party relying on the event of Force Majeure to take reasonable precautions to prevent such event of Force Majeure;

"Health and Safety Legislation" means all relevant health and safety legislation together with approved codes of practice and guidance issued by the Health and Safety Executive, the Health and Safety Commission and British Standards in place from time to time;

"Licence" means the licence granted or treated as being granted to Us under Article 6(1) (c) of the Act;

"Materials" means any goods, either the subject matter of the Contract or necessary for the Contract's performance;

"Normal Working Hours" means 0800 to 1630 hours Monday to Friday inclusive (but excluding any bank or public holidays in England and Wales);

"Offer" means the offer letter supplied to You by Us as part of the Contract Documentation;

"Outage" means the interruption of the flow of electricity over a distribution or transmission network whether planned or unplanned.

"Party" means You or Us;

"Price" means the price payable by You for the Works as detailed in the Quotation (or as otherwise varied by Us pursuant to these Conditions);

"Site" means the location where the Works are to be carried out as set out in the Offer;

"System Emergency" means an event either on Our distribution system or on the distribution system of another electricity distributor which results in Us having to divert resources for the duration of that event in order to deal with or respond to that event;

"We" and **"Us"** means Electricity North West (company number 2366949) or any other entity who carries out the Works on Our behalf (and references to **"Our"** shall be construed accordingly);

"Works" means the Works detailed in the Offer; and

"You" means any person, company or other entity (which shall include bodies corporate or other incorporated bodies) with whom Electricity North West agrees to provide the Works including any person who appears to Us to act with Your authority (and references to **"Your"** shall be construed accordingly).

In these Conditions, unless the context otherwise requires:

(a) words importing the singular shall include the plural and vice versa;

(b) words importing gender shall include any gender;

(c) words importing a person shall include a firm and any entity having legal capacity;

- (d) any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and the words following any of those terms shall not limit the sense of the words preceding those terms;
- (e) reference to any document or agreement shall be construed as a reference to the same as it may have been, or may from time to time be, amended or modified; and
- (f) references to clauses shall be construed as references to clauses of these Conditions.

2. Application & Contract Formation

- (a) The Offer shall remain valid for acceptance for 6 Months from the date of the Offer and shall then lapse.
- (b) These Conditions apply to all arrangements between us and override any other terms or conditions stipulated or requested by You. In the event that We receive two or more applications for connection which make use of the same part of Our existing network or extensions to Our network to which We are already committed or otherwise have a material operational effect on that network, We may at any time prior to the Contract coming into effect advise You that Your application is interactive and revise the terms of Our Offer, the Works and these Conditions.
- (c) No Contract shall come into effect until We have acknowledged receipt of the Acceptance Form signed by You and have received the payment on acceptance specified in the Offer. If You make any amendment to the Acceptance Form (other than completing it in accordance with its instructions) or any other of the Contract Documentation, this shall constitute a counter-offer and no Contract shall be formed until such time as We have accepted such counter-offer in writing.
- (d) Each Contract shall incorporate the Contract Documentation. In the event of any conflict or inconsistency between the elements of the Contract Documentation, the order of precedence shall be as follows: (i) Offer (ii) Conditions (iii) Acceptance Form.
- (e) Nothing in the Conditions shall require Us to enter into a Contract if to do so would be likely to involve Us being in breach of Our duties under Section 9 of the Act, in breach of any regulations made under Section 29 of the Act or of any other enactment relating to safety or standards applicable in respect of the distribution business, in breach of any industry code of agreement which We are obliged to comply with under the terms of Our Licence, or in breach of Our Licence.

3. Our Obligations

- (a) We shall (subject to these Conditions) carry out the Works in accordance with the Offer in return for You paying the Price.
- (b) We shall exercise reasonable skill and care in carrying out the Works. All other warranties, whether implied by statute, usage or otherwise are excluded to the fullest extent permitted by law.
- (c) We shall be free to decide in Our own discretion what Materials to use in carrying out the Works.
- (d) Any defects arising out of defective Materials provided by Us or defective workmanship on Our part which arise within 6 months from the date of completion of the Works will be rectified by Us on receipt of written notice from You informing Us of the defect provided that You inform Us of such defect within 7 days of becoming aware of such defect.
- (e) We shall use reasonable endeavours to obtain or procure all the Consents which We consider necessary to enable Us to complete the Works that we undertake.

4. Your Obligations

- (a) You shall provide free of charge to Us such facilities and services (including but not limited to staff welfare facilities and power) as We reasonably require in order to carry out the Works in accordance with the requirements of all Health and Safety Legislation.
- (b) You shall provide a safe and secure Site environment in accordance with the requirements of all Health and Safety legislation. You shall provide Us with all site specific health and safety information.
- (c) You shall:
 - (i) allow Us (and ensure that any third party shall allow Us) access to and egress from the Site to enable Us to perform the Works (and any remedial works that We may need to perform);
 - (ii) be responsible for the creation of suitable and accessible access points, openings and housings within any building or structure which are required for Us to carry out the Works;
 - (iii) provide Us with adequate & secure storage facilities for any Materials that We may deliver to the Site;
 - (iv) provide Us with all information set out in the Offer and with any other information which We reasonably require in order to carry out the Works (including any Site specific information that We may require);
 - (v) comply with any reasonable requirements We may make in relation to health and safety; and
 - (vi) comply with any elements of the Offer that are detailed as Your responsibility.
- (d) You warrant that all information (including but not limited to drawings) You provide to Us (or have provided to Us) in relation to the Works will be (and/or is) accurate in all respects. If such information proves to be inaccurate, We reserve the right to vary the Price and the programme of works.

(e) You warrant that the installation at the Site will comply with the Electricity Safety, Quality and Continuity Regulations 2002 (as amended) and all current Institute of Electrical Engineers wiring regulations.

(f) All Materials supplied by or on behalf of Us as part of the Works shall remain Our property at all times. Notwithstanding this, if We have delivered Materials to the Site, You agree to take reasonable care of them and the risk of loss of or damage to those Materials will transfer to You from the time when We deliver the Materials to the Site until such time as the connection to the Site is energised.

(g) You shall convey to Us, where required and in consideration for £1.00, suitably located substations site(s) with all necessary rights of way together with easements for all cables to be positioned on or over non-highway parts of the Site. The Price excludes any legal, conveyancing and consultants costs in providing such easements or other conveyancing and these costs must be borne by You in addition to the Price. You agree to provide Us with all assistance required to complete such conveyances and easements.

(h) You shall reimburse Us on request for the costs of storage of Materials held off-Site.

5. Price

(a) The Price given in the Offer is for the execution of the Works described. Where applicable, the Price has been determined in accordance with Our Statement of Methodology and Charges for Connection to Our Electricity Distribution Network.

(b) The Price does not include any value added tax or similar tax which will be payable by You at the appropriate rate.

(c) The Price may be varied by Us at any time by reason of:

(i) a breach of the Contract by You;

(ii) a Works Variation;

(iii) a suspension of the Works;

(iv) any provision in the Offer or the Conditions entitling Us to vary the Price

(v) where the costs of obtaining such consents, easements and wayleaves exceeds the pricespecified in the Breakdown.

6. Payment

(a) Unless otherwise specified in the Offer, payment of the Price will be required on acceptance of the Offer.

(b) Where we have agreed in the Offer to receive staged payments, We shall submit invoices to You upon the dates shown in the Offer. Payment is due on the date of issue of the invoice and the final date for payment shall be 14 days from the date of invoice.

(c) If there is a variation to the Price (pursuant to these Conditions) or any other charges become payable after the Works have commenced, We will be entitled to invoice for such sums immediately. Payment is due on the date of issue of the invoice and the final date for payment shall be 14 days from the date of invoice.

(d) We reserve the right to submit invoices in respect of Materials held off Site.

(e) If You fail to make payment by the final date for payment then We shall be entitled to suspend provision of the Works until such time as payment is made. In addition You shall pay interest which will accrue on the outstanding debt from the final date until payment is made at 4% above the base rate of the National Westminster Bank Plc.

(f) All payments shall be made in full, without any deductions for retention, set off or any other deductions of whatever nature.

7. Commencement and Completion

(a) Subject to the remainder of this Clause 7, We shall use Our reasonable endeavours to commence and complete the Works within a reasonable time of Our receipt of the Acceptance Form duly completed by You or, where there is a period stated in the Offer or otherwise agreed in writing for the execution of the Works, within the period so agreed. Where We agree a period for the commencement and/or completion of the Works this is given as accurately as possible but is not guaranteed. We shall have no liability to You in the event that the actual date of completion of the Works is later than estimated.

(b) Where the Works involve works to be undertaken in the highway and/or footpaths ("**Relevant Works**") We are required to comply with the notice requirements under the Traffic Management Act 2004 ("**TMA**"). We are required to provide advance notice to the relevant Local Authority prior to the start of any Relevant Works. The notice period We must provide is dependant on the length of time We envisage being on Site to connect the development. You are responsible for providing Us with adequate notice of You being ready for connection. This is required in order that We can comply with the TMA.

- (c) We shall have no liability to you for any and all direct or indirect losses associated with delays attributed to notification periods as defined under the TMA.
- (d) Should additional costs be incurred under the TMA in relation to permit schemes introduced by the relevant Local Authority pursuant to the TMA We shall notify You of such costs and You are required to make full payment of these to Us prior to the completion of the Works.
- (e) To ensure We are able to comply with the requirements of the New Roads and Street Works Act 1991 and TMA and therefore are able to start Works in a timely manner, You must provide adequate notice in line with the requirements of the TMA.
- (f) Commencement and/or completion of the Works is subject to Us first obtaining any required consents, easements and wayleaves and subject to You obtaining any consent, permissions or approvals under Clause 10(e).
- (g) Completion of the Works in the estimated timescales may be dependent on Us obtaining Outages.
- (h) In the event that You are required under Clause 4(c)(iv) to provide the full postal address and postcode of multiple premises which are to be connected at a Site, We shall not be required to complete the Works until such information has been provided to Us.
- (i) We shall not be liable for delays in the commencement, completion or performance of the Works due to causes beyond Our reasonable control including (without limitation) delay or failure by You to carry out Your obligations under these Conditions or as required under the Offer, Our access to or egress from the site being restricted, delay caused by third parties, failure to obtain any necessary consents, easements or wayleaves (save where this is due to Our acts or omissions), any constraints imposed by the New Roads And Street Works Act 1991, TMA or other legislation, war, terrorism, shortage of Materials or labour, earthquake, flood, fire or adverse weather conditions.
- (j) If We are delayed, disrupted or prevented in the execution of the Works owing to any act or omissions (other than Our own acts or omissions) then We shall be entitled to recover from You any additional costs arising from such delay or disruption.

8. Works Variations

- (a) With Our consent You may request a variation to the Works. Following such a request We will (at Our option) provide You with a variation offer for the Works together with a revised timescale for the completion of the Works. If You accept such revised variations and timescale, the Contract shall be deemed varied to take account of such revisions. We shall have no liability for any delay to the commencement and/or completion of the Works as a result of either i) Your request for a variation; or ii) the variation of the Contract.
- (b) The routes specified for the Works in the Offer are subject to Us obtaining all necessary consents, easements and wayleaves. If such consents, easements and wayleaves cannot be obtained We shall be entitled to vary the Works.
- (c) The Price is based on the Works specified in the Offer and the costs of Materials and labour prevailing at the date of the Offer and should there be any alteration in the Works or in the costs of Materials or labour subsequent to the date of the Offer We reserve the right at Our discretion to vary the Price to take account of such changes.
- (d) Our Price is based on Us being able to carry out the Works in the sequence We would normally follow (at Our discretion) in carrying out works of a similar nature, without obstruction or restriction during Normal Working Hours and on information which You provide to Us which is necessary for Us to carry out the Works. If for any reason beyond Our control We are unable to perform the Works as We have planned, the Normal Working Hours are restricted in any way, if overtime working is required or if information which You provide to Us is inaccurate, incomplete or misleading, additional charges will be made at Our absolute discretion to cover the additional cost and expenses incurred by Us.
- (e) We anticipate working in conditions which are within the requirements of the current Health and Safety Legislation. Should in Our responsible opinion the conditions not be within the requirements of such Health and Safety Legislation (including (but not limited to) conditions requiring Us to use or wear special equipment or otherwise, to use special working practices (and You have not notified Us of such conditions prior to Us issuing the Offer)), then in order to protect the health and safety of Our employees We shall be entitled to withdraw from the Site until such time as such conditions are rectified to Our satisfaction or to vary Our Price to take account of the additional cost of performing the Works.

9. Termination

- (a) Once the Contract is formed it may be terminated by You on the provision of 14 days prior written notice.
- (b) Unless We agree something different with You, We may terminate the Contract immediately and without notice if your connection is stalled or slow moving as determined by:

- (i) Notwithstanding the other provisions of this clause 9, We become aware that the Works:
 - i. Will or are likely to require a Material Change; or
 - ii. We have not been able to secure contact with You or receive a project update from You for a period of six months

(c) We shall be entitled to terminate the Contract immediately by written notice if You materially breach the Contract and, where the breach is capable of remedy, You have not remedied such breach within 7 days of receipt of a notice from Us specifying the breach and requiring it to be remedied.

(d) If You fail to make payment by the final date for payment or if You are unable to pay Your debts within the meaning of the Insolvency Act 1986 s123 or are the subject of a bankruptcy notice or petition or a bankruptcy order is made against You, or You have a receiver, liquidator or administrator appointed or a winding up order made or a resolution for winding up is passed, or a voluntary arrangement is made with Your creditors, or a petition is presented for a winding up order or an administration order, or any distress or execution is levied or threatened over any of Your assets, We shall be entitled, without prejudice to any other remedies available to Us, forthwith to either suspend the Works and to remove all unused Materials from Your premises or (at Our complete discretion) to terminate the Contract forthwith.

(e) If the Contract is terminated for any reason, You agree that all costs incurred by Us to the date of termination (including an apportionment of Our overhead costs and all costs that We have committed to) which We are unable to recoup are to be paid by You.

(f) Any termination of the Contract shall be without prejudice to the rights which have accrued up to the date of such termination.

10. Statutory Requirements

(a) We shall be responsible for seeking all consents, permissions and approvals necessary for the execution of the Works and We shall use Our reasonable endeavours to obtain such consents, permissions and approvals within a reasonable time.

(b) We shall seek permission for connection of earthed concentric wiring systems, where relevant.

(c) We shall not be responsible (and You shall bear sole responsibility and cost) for reinstating the surface on private land including the surface of streets and pavements not adopted by the highway authority at the time the cables are laid.

(d) You shall provide Us with reasonable assistance required in obtaining any necessary consents, permissions or approvals.

(e) Where the Offer states (or We have otherwise agreed) that You have an obligation to seek consents, permissions or approvals, You shall be responsible for obtaining such consents, permissions or approvals as soon as reasonably practical and at Your own cost.

(f) We shall comply with the provisions of the CDM Regulations. You shall comply with Your duties as client under the CDM Regulations.

11. Indemnity and Insurance

(a) You shall be liable for and shall indemnify Us against any claims, losses, liabilities, proceedings, costs, expenses (including professional expenses) incurred or suffered by Us arising out of or in connection with:

- (i) any liability arising out of any statute or at common law or Your negligence in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Works, unless due to any negligence of Us or of any person for whom We are responsible;

- (ii) any injury or damage to any property arising out of or in the course of or caused by the carrying out of the Works or due to Your negligence, unless due to any negligence of Us or of any person for whom We are responsible.

(b) Without prejudice to Your liability to indemnify Us, You hereby certify to Us that You have affected such Employer's Liability Insurance and Public Liability policies as are necessary to cover Your liabilities and that such policies are with a reputable insurer up to a limit of at least £1,000,000 per incident or related series of incidents and such policy shall be kept in force during and until completion of the Works.

(c) You shall insure the Site and Materials that We have supplied (whether fixed or unfixed) to cover any damage to them from any cause whatsoever.

(d) Upon Our request You agree to provide Us with copies of any insurance policy taken out pursuant to this Clause 11 together with the receipt for the last premium. If You fail to provide such copies, We shall be entitled to suspend provision of the Works until such time as You provide these to Us. If You fail to provide Us with the required documentation within 14 days of Our request

We shall be entitled to terminate this Contract immediately.

12. Limitation of Liability

- (a) We shall have no liability for any loss or damage to the extent that such loss or damage is caused by You or any instructions given by You.
- (b) Unless otherwise agreed in writing, Our Price has been calculated on the basis that We will have no responsibility to You for any liquidated and ascertained damages that You may incur to third parties.
- (c) We shall have no liability for any loss or damage sustained by You whether arising in contract, tort (including negligence) or otherwise other than such:
- (i) as may arise from Our negligence or that of Our employees or agents or Our breach of the express terms of this Contract, or
 - (ii) in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Works and due to any negligence of Us or any person for whom We are responsible.
- (d) Our maximum aggregate liability to You whether arising under contract, tort (including negligence) or otherwise (and including any remedial costs) shall not exceed the level of the Price or £1,000,000 (whichever is higher).
- (e) In no circumstances shall We have any liability to You (whether arising in contract, tort (including negligence) or otherwise) for any loss of profits, loss of revenue, loss of project or opportunity, or for any wasted expenses, any loss of contract or goodwill, any payments to third parties or for any indirect or consequential loss of any kind.
- (f) The rights and remedies set out in these Conditions shall be Your exclusive remedies and are in substitution of all other rights and remedies provided by common law or statute in respect of the subject matter of the Contract, including any rights either party may have in tort, contract or for breach of statutory duty.
- (g) You shall not be entitled to bring any claim for any loss or damage suffered by You (howsoever arising) to the extent that such loss or damage is covered by an insurance policy held by You and You shall ensure that Your insurers waive any and all rights of subrogation that they may have against Us.
- (h) Nothing in these Conditions shall limit or exclude Our liability to You for death or personal injury by Our negligence, for any fraud or for any other liability which it is not permitted to exclude or limit by operation of law.
- (i) You acknowledge that in entering into this Contract You do not do so on the basis of or rely on any representation warranty or other provision except as expressly provided in the Contract provided that this clause shall not exclude any liability which We would otherwise have to You in respect of any statements made fraudulently by Us to You prior to the date the Contract is formed.

13. Force Majeure and System Emergencies

- (a) If either Party is unable to carry out its obligations under the Contract due to a circumstance of Force Majeure or if We are unable to carry out Our obligations under the Contract due to a System Emergency then the Contract shall remain in full force and effect but save as the obligations (other than obligations as to payment) shall be suspended without liability for a period equal to the circumstance of Force Majeure or System Emergency (as the case may be) provided that:
- (i) the Party affected by the Force Majeure or System Emergency advises the other Party in writing, specifying the nature and extent of the Force Majeure or System Emergency, as soon as reasonably practicable after becoming aware of the Force Majeure or System Emergency;
 - (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure or the System Emergency (as the case may be);
 - (iii) no obligations that arose before the Force Majeure or the System Emergency causing the suspension of performance are excused as a result of the Force Majeure or the System Emergency (as the case may be); and
 - (iv) the affected Party shall use all reasonable efforts shall be used to remedy its inability to perform its obligations.
- (b) If the Force Majeure or System Emergency in question prevails for a continuous period in excess of three (3) months after the date on which it begins, the other Party may terminate the Contract on provision of fourteen (14) days' notice in writing to the affected Party.
- (c) Where We incur additional costs due to You being unable to perform Your obligations due to Force Majeure we may vary the Price.

14. Energy Supplier

Where an electricity supplier is required to be appointed for the connection prior to energisation of the Site, the supply of electricity shall not be commenced until a supplier has been appointed by You.

15. Sub-Contracting & Assignment

We reserve the right to sub-contract any part of the Works or to assign Our interest in the Contract. You shall not be entitled to assign or transfer the benefit or burden of the Contract or any interest in it

16. Confidentiality

- (a) Each Party shall treat as confidential and shall not disclose to any other person any of the commercial, technical and/ or contractual provisions of the Contract or any other commercial or technical information which is acquired or obtained subject to this duty of confidentiality during the course of this Contract.
- (b) The undertakings set out in Clause 16(a) shall not apply to:
 - (i) any disclosure which is necessary for the proper performance of the Contract;
 - (ii) any disclosure which is required by law or by the Authority;
 - (iii) any disclosure to a Party's professional advisors provided that such advisors are bound by the same duties of confidentiality;
 - (iv) any disclosure which is agreed in advance by the Parties; or
 - (v) any information which is already in the public domain.
- (c) The provisions in Clause 16 shall survive the expiry or termination of the Contract.

17. Intellectual property

- (a) We shall retain all Intellectual Property Rights in the documents made by or on behalf of Us in connection with the Works.
- (b) You shall be liable for and indemnify Us (and keep indemnified) protect, defend and hold Us harmless from and against all actions, proceedings, claims and demands brought or made and all losses, damages, cost, expenses, liabilities, settlements and judgments incurred, suffered or arising out of any claim for infringement of the Intellectual Property Rights pursuant to clause 17(a) insofar as such breach has been caused or contributed to by You.

18. General Terms

- (a) Any failure or delay by Us in exercising any right or remedy under this Contract shall not constitute a waiver of that right or remedy and any single or partial exercise of any right or remedy by Us shall not preclude any other or further exercise of it or any other right or remedy. No waiver by Us of any breach of these Conditions shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- (b) If You need to serve a notice on Us, You shall send it by mail to address given in the Offer. If We need to serve a notice on You, We shall send it by mail to the address noted in the Contract (or such other address as You may notify Us of in writing from time to time). Such notice shall be deemed to have been received by the relevant party within 3 days of posting.
- (c) If any provision of these Conditions is held by any court or other competent authority to be unenforceable, in whole or in part, the validity of the other provisions of these Conditions and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
- (d) These Conditions supersede and replace all prior terms and conditions, communications, representations, warranties, stipulations, undertakings, and agreements whether oral or written between the parties. You agree that You have not relied on any representation, warranty or statement other than those contained in the Contract Documentation.
- (e) All third party rights are excluded and no third parties shall have any rights to enforce the Contract.
- (f) Where You are acting as a consumer (that is other than for the purposes of Your trade or business), nothing in these Conditions shall affect Your statutory rights.
- (g) The headings in these Conditions are for convenience of reference only and shall not affect its interpretation.
- (h) Where You are two or more legal persons Your obligations and liabilities under this Contract shall be joint and several.
- (i) If You are unhappy with the terms or charges and agreement cannot be reached with Us within a reasonable time, then either of us may be able to request determination of the dispute by the Gas and Electricity Markets Authority in accordance with the Act.
- (j) Notwithstanding Clause 18(i), these Conditions and any Contract entered into pursuant to them shall be governed by and constructed in accordance with English Law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts in relation to any matter or dispute arising out of or in connection with these Conditions (whether of a contractual or tortious nature or otherwise).